

REMARKS

The Examiner is thanked for the thorough examination of this application. The Office Action, however, has continued to reject all claims 1-20. For at least the reasons set forth herein, Applicant disagrees and requests reconsideration and withdrawal of the rejections.

Withdrawal of Previous Rejections

In a previous Office Action, all claims were rejected as allegedly anticipated U.S. published application 2005/0076134 to *Bialik et al.* That application, however, did not constitute prior art, but instead relied upon the filing date of a provisional application, to which the '134 application ultimately claimed priority. As noted by the Examiner in the present Office Action, MPEP 2136.03 requires: "...In addition, the subject matter relied upon in the rejection must be disclosed in the earlier-filed application in compliance with 35 U.S.C. § 112, first paragraph, in order to give that subject matter the benefit of the earlier filing date under 35 U.S.C. § 102(e)." Consequently, the present Office Action has withdrawn the previous rejection, and has instead set forth rejections based on the provisional application. In this regard, the Office Action has tentatively rejected all claims 1-20 under 35 U.S.C. § 102(e) as allegedly anticipated by provisional application 60/291,130 to Bialik (hereafter the '130 application).

'130 Application is Not Prior Art to Present Application

The '130 application that the Office Action now relies upon is not prior art to the presently pending claims. In this regard, a declaration under 37 C.F.R. § 1.131 is submitted herewith. This accompanying declaration clearly established conception of the claimed

embodiments well before the filing date of the '130 application. Further, the accompanying declaration sets out facts that clearly demonstrate due diligence by the Applicants from a date prior to the May 17, 2001 filing date of the '130 application until the August 27, 2001 filing date of the present application. Applicants have attached a number of supporting exhibits to the accompanying declaration, which exhibits verify the diligent actions of Applicants in pursuing the preparation and filing of the present application.

As the first date shown in the Exhibits attached to the accompanying declaration is May 21, 2001 (which is four days after the filing date of the '130 application), the undersigned attorney provides the following additional table (which supplements the accompanying declaration). As set forth in the accompanying declaration, the invention disclosure form was provided to Hewlett-Packard Company prior to the filing date of the '130 application. Likewise, Hewlett-Packard Company authorized the undersigned attorney to prepare this '254 application prior to the May 17, 2001, filing date of the '130 application. To support this, the undersigned has retrieved records for the billing system of his firm during the relevant time period. Set forth in the table below, are data taken directly from the billing system of the undersigned's firm, between the dates of May 10, 2001 (prior to the filing date of the '130 application) and May 20, 2001 (the day before the first draft of this '254 application was emailed to Roland Hochmuth for initial review). The purpose of this table is to demonstrate due diligence between a time prior to the May 17, 2001 filing date of the '130 application and the May 21, 2001 date of the communication of the first draft of the '254 application to Roland Hochmuth. Diligence from that date until the filing date of the present '254 application is clearly established in the statements and supporting exhibits of the accompanying declaration.

Date	Work Description (from TKHR billing system)
05/10/2001	Review invention disclosure material and teleconference with Roland Hochmuth to discuss invention;
05/11/2001	Review invention disclosure and background materials; Draft claims for patent application;
05/18/2001	Draft additional claims; Prepare drawing sheets; Draft portion of detailed description;
05/19/2001	Continue preparation of patent application;
05/20/2001	Complete initial draft of patent application; Prepare draft of drawings; Send to Roland Hochmuth for review and comment;

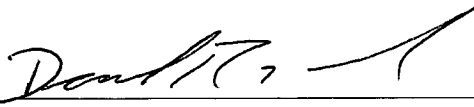
For at least these reasons, conception of the claimed embodiments of the present application prior to the filing date of the '130 application, and diligence from a date prior to the May 17, 2001 filing date of the '130 application until the filing date of the present application have been clearly established. Accordingly, the '130 application should be removed from consideration. As no other rejection has been advanced against the presently pending claims, with the removal from consideration of the '130 application, all pending claims should now be allowed.

CONCLUSION

Applicant respectfully submits that all claims are now in proper condition for allowance, and respectfully request that the Examiner pass this case to issuance. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

No fee is believed to be due in connection with this Response to Office Action. If, however, any fee is deemed to be payable, you are hereby authorized to charge any such fee to Hewlett-Packard Company's Deposit Account No. 08-2025.

Respectfully submitted,

By: 

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Please continue to send all future correspondence to:

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